

## IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION II

STATE OF WASHINGTON, RESPONDENT,

V.

WILLIAM SCHENCK, APPELLANT. No. COA 42451-7-II

STATEMENT OF
ADDITIONAL GROUNDS
(RAP 10.10)

I, WILLIAM SCHENCK, HAVE RECEIVED AND

REVIEWED THE OPENING BRIEF OF MY ATTORNEY.

SUMMARIZED BELOW ARE THE ADDITIONAL GROUNDS

FOR REVIEW THAT ARE NOT ADDRESSED IN THAT BRIEF.

I UNDERSTAND THAT THE COURT WILL REVIEW

THIS STATEMENT OF AUDITIONAL GROUNDS FOR

REVIEW WHEN MY APPEAL IS CONSIDERED ON THE

MERITS.

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APPELLANT ACKNOWLEDGES RECEIPT OF THE VERBATIM REPORT OF PROCEEDINGS ON MARCH 20, 2012. THE SAG MUST BE MAILED NO-LATER-THAN APRIL 19, 2012.

GR 3.1.

## I. STATEMENT OF THE CASE

SCHENCK WAS SENTENCED TO AN EXCEPTIONAL SENTENCE, DOWNWARD DEPARTURE, TO 120 MONTHS FOR SOLICITATION TO COMMIT FIRST DEGREE MURDER, COMMITTED ON OR ABOUT MAY 5, 2000. THE SENTENCING COURT ALSO IMPOSED 24 MONTHS OF COMMUNITY PLACEMENT. SCHENCK SERVED HIS ENTIRE SENTENCE, INCLUDING 510 GOOD TIME DAYS, AND WAS RECEASED AS HOMELESS UNDER POSTRELEASE SUPERVISION. (APPENDIX 1, PAGE 5); (RP19); (RP23, 33).

## II. STATEMENT OF AUDITIONAL GROUNUS

## A. COUNTY OF ORIGIN

RCW 72.09.270 STATES IN PERTINENT PART:
"(8)(A) IN DETERMINING THE COUNTY OF DISCHARGE
FOR AN OFFENDER RELEASED TO COMMUNITY
CUSTODY OR COMMUNITY PLACEMENT, THE
DEPARTMENT MAY NOT APPROVE A RESIDENCE
LOCATION THAT IS NOT IN THE OFFENDERS COUNTY
OF ORIGIN ..."

THIS SECTION BECAME EFFECTIVE ON JULY 22, 2007 PURSUANT TO ESSB 6157, Session Laws of 2007 c. 483, Conified As RCW 72.09.270(8)(a).

EFFECTIVE AUGUST 1, 2009 THE LEGISLATURE

AMENDED THIS STATUTE AND DELEATED "OR COMMUNITY

PLACEMENT " AFTER "COMMUNITY CUSTODY" IN (8)(a)

SESSION LAWS OF 2008, C. 231 SEC. 48.

THE AMENDED STATUTE NOW ONLY APPLIES TO COMMUNITY CUSTODY OFFENDERS. THIS APPEAL SHOULD BE GRANTED BASED UPON THIS FACT ALONE.

## B. GEOGRAPHICAL RESTRICTIONS

BEFORE DISCUSSING GEOGRAPHICAL RESTRICTIONS
IMPOSED BY THE DEPARTMENT OF CORRECTIONS

[DEPARTMENT], THE PARTIES NEED TO UNDERSTAND THE
DIFFERENT CRIMINAL STATUTES IN EFFECT DURING
DIFFERENT PERIODS OF TIME!

- 1. TO 1981: INDETERMENT SENTENCING REVIEW BOARD (ISRB);
- 2. JULY 1981 TO JUNE 30; 2000: SENTENCING REFORM ACT (SRA);
- 3. JULY 1, 2000 TO DATE: OFFENDER ACCOUNTABILITY ACT (OAA).

SCHEWCKS CRIME OCCURRED ON OR ABOUT MAY 5,

2000, AND, THEREFORE, HE IS AN SRA OFFENDER.

"LINDER THE SENTENCING REFORM ACT OF 1981 (SRA), CHAPTER 9.94A RCW, OFFENDERS ARE MONITORED BY COMMUNITY CORRECTION OFFICERS WHO ARE AUTHORIZED TO REPORT VIOLATIONS OF THE CONDITIONS OF RELEASE TO HIS SENTENCING JUDGE. RCW 9.94A.631, THE JUDGE IS AUTHORIZED TO FASHION AN APPROPRIATE RESPONSE. RCW 9.94A, 634 (1). FOR EXAMPLE, THE JUDGE IS EXOCICITY AUTHORIZED TO MODIFY THE SENTENCING CONDITIONS BY REQUIRING EDUCATION, COUNSELING IMPATIENT TREATMENT, CURFEW, DAILY REPORTING, HOME DETENTION, JAIL, AND OTHER APPROPRIATE RESPONSES WHEN AN OFFENDER IS NON-COMPLIANT, RCW 9.94A. 634(3). (FORMERELY RCW 9,94A, 200 (2001)). UNDER THE SRA, THE COMMUNITY CURRECTIONS OFFICER IS THE EYES AND EARS OF THE SENTENCING JUDGE." JOYCE V. DEPARTMENT OF CORRECTIONS ET AL., 155 WN. 20 306, 310-311, 119 P.3D 825 (2004).

IN THE INSTANT MAITER, THE COURT SANCTIONED

SCHENCK WITH 8 VIOLATIONS X 60 DAYS PER VIOLATION
FOR A TOTAL OF 480 DAYS, (APPENDIX 2). SIX

OF THESE VIOLATIONS INVOLVE GEOGRAPHICAL RESTRICTIONS
IMPOSED UPON SCHENCK BY THE DEPARTMENT.

WHEN SCHENCK WAS SENTENCED, THE SENTENCING COURT DID NOT IMPOSE ANY GEOGRAPHICAL RESTRICTIONS.

ON MAY 5, 2010 SCHENCK WAS RELEASED FROM PRISON. COMMUNITY CORRECTION OFFICERS JASON FIMAN AND MICHAEL BOOME TRANSPORTED SCHENCK FROM STAFFORD CREEK CORRECTION CENTER, ABERDEEN, TO THE OLYMPIA DOC FIELD OFFICE, FAND DIRECTED SCHENCK TO REPORT TO THEM AND NOT TO LEAVE THURSTON COUNTY WITHOUT THEIR PERMISSION. SEE NOTICE OF VIOLATIONS DATED 1/3/2011; 1/27/2011; AND 11/24/2010, (RP 17). SCHENCK STATED THAT HE DID NOT HAVE A GEOGRAPHICAL RESTRICT-ION, THEY REPLIED THAT THEY (DOC) HAD THE RIGHT TO IMPOSE A GEOGRAPHIC RESTRICTION. SPECIFICALLY, BOTH CCO'S STATED THAT I WAS NOT TO TRAVEL FO COWLITZ COUNTY. "I TALKED TO HIM [SCHEWCK] ABOUT 30ME OF HIS REQUIREMENTS ON PROBATION AND ESPECIALLY THE FACT THAT HE COULON'T LEAVE THURSTON COUNTY." lRPH).

UNDER THE SRA THE COURTS SETS THE CONDITIONS

AT SENTENCING. (APPENDIX 4, PAGE 5). (JUDGMENT

AND SENTENCE, PAGE 5). THE COURT MAY, UR MAY NOT,

REQUIRE THE DEPARTMENT TO SET FORTH AFFIRMATIVE

ACTS TO MONITOR COMPLIANCE, HOWEVER, THE DEPARTMENT

MAY NOT SET OUT ANY CONDITIONS. (APPENDIX 4, PAGE 5)

EN CONTRAST, SINCE JULY 1, 2000 UNDER THE OAA; THE DEPARTMENT MAY NOW SET OUT CONDITIONS AS WELL AS THE COURT. STATE V. RIZOR, 128 WN. APP. 898, 901,

FN1, 91 P.30 133 (2004) (APPENDIX 5, PAGES 3-4).

CCO FIMAN TESTIFIED THAT PART OF THE CONDITIONS

"... TO DOC ARE TO REMAIN IN HIS GEOGRAPHIC AREAS."

AS PREVIOUSLY STATED, SCHENCK HAD NO GEOGRAPHICAL

COURT-ORDERED RESTRICTIONS. CCO FIMAN MISREPRESENTED

THAT THE COURT IMPOSED A GEOGRAPHIC RESTRICTION.

"ANY SENTENCED IMPOSED UNDER THIS CHAPTER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS IN EFFECT WHEN THE CHIRENT OFFENSE WAS COMMITTED." RCW 9.944.345.

LINDER THE SRA THE DEPARTMENT HAD NO AUTHORITY OF LAW TO IMPOSE A GEOGRAPHICAL RESTRICTION.

### C. PRE-APPROVAL OF RESIDENCE

AS PREVIOUSLY STATED, SCHENCK WAS RELEASED FROM PRISON ON HIS MAXIMUM RELEASE DATE (MRD), ON MAY 5, 2010. Which a SRA offender reaches his MRD "FOR OFFENDERS RELEASING HOMELESS OR REFUSING TO PROVIDE AN ADDRESS..." [HE] "WILL BE RECEASED ON [HIS] MRD." (APPENDIX 1, PAGE 5)

THE DEPARTMENT TESTIFIED (RP23), AND THE STATE IMPLIED (RP33), THAT SCHENCK REQUIRED A PRE-APPROVED ADDRESS AND LIVING ARRANGEMENTS. THIS IS NOT TRUE,

UNDER THE SEA THE COURT SETS THE CONDITIONS

AT SENTENCING. (APPENDIX 4). THE COURT MAY, OR MAY NOT, REQUIRE THE DEPARTMENT TO SEX FORTH AFFIRMATIVE ACTS TO MONITOR COMPCIANCE, HOWEVER, UNDER THE SRATHE DEPARTMENT MAY NOT SET OUT CONDITIONS OF RELEASE. (APPENDIX 4, PAGE 5) (JUDGMENT AND SENTENCE, PAGE 5).

IN CONTRAST, SINCE JULY 1, 2000, UNDER THE OPAR, THE DEPARTMENT MAY IMPOSE CONDITIONS.

(APPENDIX 5, PAGE 4)

SIMPLY STATED, SCHENCK WAS NOT REQUIRED TO COMPORT WITH PRE-APPROVAL OF RESIDENCE AFTER HIS MRV.

SCHENCK WAS RELEASED FROM PRISON ON HIS MRD, UNDER POSTRELEASE SUPERVISION, WITH NO LIVING ARRANGEMENTS OR RESTDENCE APPROVAL REQUIRED. (APPENDIX 1, PAGE 5).

## D. WILLFUL VIOLATIONS

"AN OFFENDER WHO FAILS TO COMPLY WITH OR VIOLATES A CONDITION OR REQUIREMENTS OF A SENTENCING ORDER MINY BE CONFINED FOR A SIXTY DAY PERIOD FOR EACH VIOLATION IF THE COURT FINDS BY A PROPONDERSANCE OF THE EVIDENCE THAT THE VIOLATION WAS WILLFUL."

STATE V. Mc DOUGAL, 120 WN. 2d 334, 346-347, 841
P. 20 1232 (1992)

"WILLFUL" AS USED IN A CRIMINAL STATUTE, IT
GENERALLY MEANS AN ACT DONE WITH A BAD
PURPOSE. STATE U. ALLEN, 101 WN. 20 355, 360, 678
P. 20 798 (1984); SCREWS V. UNITED STATES, 325 U.S.
91, 65 S. Ct. 1031 (1945) (AN ACT DONE WITHOUT
TUST CAUSE OR EXCUSE).

HISTORICALLY, THE REQUIREMENT THAT A DEFENDANT ACT WITH KNOWLEDGE OF THE CONSEQUENCES OF HIS ACTIONS. "WILLFUL" WHEN USED IN A CRIMINAL STATUTE, REQUIRED THAT A DEFENDANT ACT WITH AN EVIL PURPOSE OR CRIMINAL INTENT. UNITED STATES V. MURDOCK, 290 U.S. 389, 394, 54 S.Ct. 223 (1933); UNITED STATES N. ILLINOIS CENTRAL RR., 303 U.S. 239, 58 S.Ct. 533 (1938). THE TERM "WILLFUL" CONTINUES TO BE INTERPRETED TO REQUIRE SUCH A HEIGHTENED DEGREE OF CULP-ABILITY IN THE CONTENTS OF SOME STATUTES, SEE EG. UNITED STATES V. BISHOP, 412 U.S. 346, 359-60, 93 S.Ct. 2008 (1973), HOWEVER, THIS IS NO LONGER THE GENERAL RULE, THE MEANING OF THE TERM "WILLFUL" HAS come TO VARY WIDELY, DEPENDING UPON ITS CONTENT. STATE V. BAUER, 92 WN. 20 162, 595 P.20 544 (1979); Spies V. UNITED STATES, 317 U.S. 492, 63 S.Ct. 364 (1943). PRIOR TO THE EWACT-MENT IN 1975 OF THE REVISED CRIMINAL CODE, WILLFUL WAS GENERALLY INTERPREATED TO MEAN AN ACT

COMMITTED INTENTIONALLY, DELIBERATELY AND/OR
DISTINGUISHED FROM ONE DONE ACCIDENTLY, INADVERTENTLY, INNOCENTLY AND/OR WITH LAWFUL
EXCUSE." STATE V. OYEN 78 WN. 28 909, 916, 480 P.28
766 (1971); STATE V. RUSSELL, 73 WN. 28 903, 907,
442 P.20 988 (1968); STATE V. STEWARD, 73 WN. 20
701, 440 P.20 815 (1968). WHILE CERTAINLY DISTINCT
FROM HISTORICAL DEFINITION REQUIRING A SHOWING
OF EVIL PURPOSE, THIS DEFINATION OF WILLFUL" LEFT
UNCLEAR WHETHER AN ACT DONE WITH ENOWLEDGE OF
ITS PROBABLE CONSEQUENCES WOULD BE CONSIDERED
TO BE WILLFUL.

IN THE INSTANT MATTER, SCHENCK WAS "DUMPED" IN THURSTON COUNTY BY THE DEPARTMENT ON 3
SEPARATE OCCASSIONS, EACH TIME SCHENCK OBJECTED,
HOLDING THAT HE HAD NO GEOGRAPHICAL RESTRICTIONS.

SCHENCK HAD NO RESOURCES IN THURSTON COUNTY;
HAD NOT BEEN IN THURSTON COUNTY IN TWO DELADES;
HAD NO FRIENDS OR FAMILY IN WHICH TO RELY UPON;
NO FUNDS; NO HOUSING; NO FOOD; NO CLOTIFING; NO
TRANSPORTATION; EXPOSED TO COLD WEATHER; RAIN AND
SNOW; SOAKED TO THE SKIN; AND, FORCED BY THE
DEPARTMENT TO BE HOMELESS. THE DOC OLYMPIA
FIBLD OFFICE REFUSED TO HELD SCHENCK. (RP24, 25, 26, 32)

SCHENCK WENT TO COWLITZ COUNTY, WHERE HE REPEABLY INFORMED DOC THAT HE HAD RESOURCES.

THIS IS THE UNITED STATES OF AMERICA. NO PERSON CAN FORCE THIS TYPE OF INHUMANE TREAT-MENT ON ANOTHER HUMAN BEING. DOC LEFT ME WITH ONE ALTERNATIVE. TRAVEL TO COULITZ COUNTY WHERE I REPEATEULY INFORMED DOC THAT I HAD RESOURCES.

SCHENCK BELIEVES THAT HE ACTED PRUDENTLY, WITH JUST CAUSE, AND A LAWFUL EXCUSE. SCHENCK SEEKS. PEVERSAL OF HIS VIDEATIONS FOR THE REASONS SET FORTH, INCLUDING THE REASONING SET FORTH IN THE FORCE MAJEURE DOCTRING AND THE VIS MAJOR DOCTRING.

CITOLI V. CITY OF SEATTLE, GI P.3D 1165, 1178, 115 WV. APP. 459 (2002); KRAUSE V. BOARD OF SCHOOL TRUSTEES, 162 IND 278, 284, 70 NE 264; I AM J.2D ACT OF GOD, SEC. 4.; GRANT V. LIBBY, MCNEIL LIBBY, 160 WN. 138, 295 P.139 (1931).

"THE FORCE MAJEURE DOLTRINE IS THE EQUIVALENT OF THE VIS MAJOR DOCTRINE. THE FORCE MAJEURE EVENT PROVIDES A COMPLETE DEFENSE TO LIABILITY IF ONE PARTY IS UNABLE TO PERFORM ITS OBLIGATION ... OF CIRCUMSTANCES OUTSIDE ITS CONTROL ... HEARST COMMUNICATIONS, INC., ET AL, V. SEATTLE TIMES, 154 WN. 28 493, 504, 115 P.38 262 (2005);

GRANT V. LIBBY, MCNEIC & LIBBY, 160 WASH 138, 147-148, 295 P. 139 (1931)

IN CITOLI V. CITY OF SEATTLE, THE COURT PROVIDED THE DEFINITION OF "FORCE MAJEURE CONDITIONS" STATES IN PERTINENT PART: "THE ... [VIOLATOR] ... WILL NOT BE LIABLE FOR LOSSES OR DAMAGES, CONSEQUENCES FROM ANY ACT OF GOD, STRIKES, LOCKOUTS, ACTS OF PUBLIC ENEMY WARS, BLOCKADES, RIOTS, EPIDEMICS, LAND-SLIDES, EARTHQUAKES, FIRES, STORMS, FLOODS, UN-FORESEEABLE OR UNUSAL WEATHER CONDITIONS, WASH-OUTS, ARRESTS OR RESTRAINTS OF RULIERS AND PEOPLES, CIVIL DISTURBANCES, EXPLOSIONS, BRUAKAGE OR ACCIDENT TO MACHINERY OR LINES OF PIPES, LINE FREEZE-UPS, TEMPORARY FAILURE OF GAS SUPPLIES, THE BINDING ORDER OF ANY CAIRT OR GOVERNMENTAL AUTHORITY, AND ANY OTHER CAUSE, WHETHER OF THE KIND HEREIN ENUMERATED OR OTHERWISE, AND WHETHER CAUSE OR OCCASIONED BY OR HAPPENING ON ACCOUNT OF THE ACT OR OMISSION OF THE ,.. VIOLATOR ... OR ANY OTHER PARTY, IF THE CAUSE IS NOT REASONABLY WITHIN THE CONTROL OF THE PARTY ASSERTING FURCE MAJEURÉ AND WHICH BY THE EXCERCISE OF DUE DILIGENCE SUCH PARTY IS UNABLE TO PREVENT OR OUT COME. " CITOLI, 61 P.3d AT 1178.

SCHENCK BELIEVES HE MEET THIS CRITCHIA.

### D. BANISHMENT

SCHENCK WAS DIRECTED BY CCO'S MICHAEL
BOONE AND JAMES FIMAN TO STAY IN THURSTON
COUNTY, AND NOT TO LEAVE THURSTON COUNTY
WITHOUT PERMISSION. SCHENCK WAS INITIALLY ORDERED
NOT TO GO TO COWLITZ COUNTY, AND LATER DIRECTED
NOT TO GO TO ANY COUNTY LOWER THAN THURSTON
COUNTY. (RP 11, 12, 14, 27, 26, 34, 35)

THE SENTENCING COURT NARROWLY TAILORD

SCHENCK'S JUDGMENT AND SENTENCE BY IMPOSING

A "NO CONTACT" ORDER. (JUDGMENT AND SENTENCE,

PAGE 4).

TO SURVIVE A BANISHMENT ORDER, THE ORDER
MUST BE NARROWLY TAILORED TO SERVE A COMPELLING
OUVERNMENTAL INTEREST. THE COURT RULLED PROPERLY.
HOWEVER, THE DEPARTMENT BANISHED SCHENCK FROM
LEWIS COUNTY, COULITZ COUNTY, CLARK COUNTY AND
SKAMANIA COUNTY, WITHOUT THE AUTHORITY OF LAW.

STATE V. SIMS, 171 WN. 2d 436, 256 P.3d 285 (2010);

STATE V. SCHIMEL PFENIG, 128 WN. APP. 224, 115 P.3d
338, 339-42 (2005) (OTHER CASES OMITTED); SHAPIRO
V. THOMPSON, 394 U.S. 618, 630-31, 634, 89 S.Cf.
1322 (1969). BECAUSE OF ITS CONSTITUTIONAL IMPLICATIONS,
WE APPLY STRICT SCRUTINY IN REVIEWING A BANISHMENT
ORDER. THOMPSON, 394 U.S. AT 634.

## F. POST RELEASE SUPERVISION

SOUND PRINCIPLES OF STATUTORY INTERPRETATION

AND RESPECT FOR LEGISLATIVE ENACTMENTS REQUIRE

THAT THE SPECIFIC STATUES PREVAILS TO THE EXCLUSION

OF THE GENERAL. STATE V. SHRINER, 101 WN. 20 576,

583, 681 P.20 327 (1984) (APPENDIX 6)

THE SENTENCINC COURT ERRED WHEN IT SENTENCED SCHENCK TO 24 MONTHS OF COMMUNITY PLACEMENT UNDER THE GENERAL STATUTE RCW 9.948.050(2). SCHENCK SHOULD HAVE BEEN SENTENCED UNDER THE SPECIFIC STATUTE, RCW 9.948.060. SCHENCE'S CRIME WAS A SERIOUS VIOLENT OFFENSE, AND A CRIME AGAINST A PERSON, SOCICITATION TO COMMIT FIRST DEGREE MURDER, WHICH UNDER THE SPECIFIC STATUTE 12 MONTHS OF COMMUNITY PLACEMENT. SHRINER, 101 WN. 28 AT 583.

## G. URINALYSIS

THE DOC OLYMPIA FIELD OFFICE, CCO MICHAEL

BOONE, MANDATED ON MAY 5, 2010, THAT SCHENCK PROVIDE

A CONTACT NAME OR TELEPHONE NUMBER WHERE HE

COULD BE REACHED 24/7. SCHENCK WAS FORCED TO

SPEND WHAT LITTLE MONEY HE HAD TO PURCHASE A CELL

PHONE. THE ONLY TIME DOC TELEPHONED ME WAS ON

JANUARY 24, 2011 LEAVING A MESSAGE TO REPORT TO

HIM BY THE END OF THE DAY. (RP17).

FROM APPROXIMATELY MAY 12, 2010 TO NOVEMBER 18, 2011 SCHENCK REPORTED TO THE LONGVIEW DOC AND TO COWCITZ COUNTY CORRECTIONS PER COURT ORDER. AFTER NOVEMBER 20 SCHENCK WAS AVAILABLE FOR A UA'S, BUT WAS NOT CALLED TO PROVIDE ONE.

IN COA 41401-5-II THE COWLITZ COUNTY SUPERIOR COURT, THE HONORAGLE JAMES STOWER PRESIDING, RULED ON OCTOBOR 28, 2010:

"I DO FIND THAT HE VIOLATED THE VIOLATION #1,

FAILING TO REPORT IN PERSON, AS DIRECTED, TO HIS

SUPERVISING COMMUNITY CORRECTION OFFICER SINCE

MAY 10, 2010."

AS FAR AS VIOLATION \$2, THIS CONCERN -- I

THINK THAT IS THE SAME AS \$\frac{4}{1}\$ IN MAKING HIM
SELF AVAILABLE, I DON'T FIND ANYTHING

ADDITIONAL ADDED TO THAT. I'M NOT GOING TO

TREAT IT AS A SEPARATE VIOLATION,"

VIOCATION #2 WAS THEREBY DISMISSED. (APPEXDIX 2).

ONE COURT DISMISSES A VIOLATION AS DEING THE SAME
CRIMINAL CONDUCT, WHEREAS IN THE INSTANT MATTER, THE
SAME COURT, BUT WITH A DIFFERENT JUDGE, FINDS THAT
SCHENCK WILLFULLY VIOLATED (2X) THE VIOLATION FAILURE
TO MAKE HIMSELF AVAILABLE FOR UA TESTING IN THURSTON

COUNTY. IS SCHENCK BEING DEPRIVED OF THE SAME CRIMINAL CONDUCT, DOUBLE JEOPARDY, OR SPECIFIC STATUTES PREVAIL OVER THE GENERAL STATUTE? THERE WAS GENERALLY A REFUSAL FROM THE COURT TO HEAR THIS AND OTHER MATTERS, CITING JURISDICTIONAL ISSUES. THIS MAY REQUIRE SENDING THIS ISSUE BACK TO THE SUPERIOR COURT FOR RESOLUTION,

## III CONCLUSION

SCHENCK ASKS THIS COURT TO ADDRESS THE COUNTY OF ORIGIN' ARGUMENT ON ITS MERITS, AND TO ISSUE RULINGS ON THE SUPPLEMENTAL ADDITIONAL GROUNDS.

WHERE THE STATE CONTINUALLY ARGUED THAT

SCHENCK DELIBERATELY DID NOT FOLLOW COURT RULES

AND DOC DIRECTIVES, IT IS BECAUSE HE DID NOT LOOK,

OR REFUSED TOO. IT WAS NOT SCHENCK THAT DID

NOT FOLLOW RULES AND STATUTES, BUT THE DEPARTMENT

AND THE STATE, AS SET FORTH HEREIN AND IN THE

BRIEF OF APPELLANT. I OBJECT TO THE LOSS OF MY

FREEDOM... AND THE WAY I WAS TREATED BY THE STATE,

A 8 6

. . .

RESPECTFULLY SUBMITTED THIS 16 DAY OF APRIL, 2012.

WILLIAM SCHENCK
COWLITZ COUNTY JAIL
1935 1ST AVENUE, E-14
LONGVIEW, WA 98632

I DECLARE UNDER PENALTY OF PERTURY THAT THE FOREGOING FACT ARE TRUE AND ACCURATE.

DATED THIS 16th DAY OF APRIL, 2012, IN THE CITY OF LONGVIEW, COUNTY OF COWLITZ, STATE OF WASHINGTON.

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## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

#### DIVISION IT

STATE OF WASHINGTON,

RESPONDENT,

V.

WILLIAM SCHENCK,

APPELLANT.

No. COA 42451-7-A DECLARATION OF SERVICE BY MAILING

I, WILLIAM SCHENCK, DO DECLARE THAT I AM A DEISONER AT THE COWLITZ COUNTY JAIL IN LONGUIEW, WA., AND ON THE 18th DAY OF APRIL, 2012, I DELIVERED TO PRISON AUTHURITIES, TO BE PROCESSED BY THE JAILS LEGAL MAIL SYSTEM, CONTAINING THE FOLLOWING DOCUMENTS:

- (1) STATEMENT OF SUPPLEMENTAL ADDITIONAL GROUNDS, WITH APPENDIXES
- (2) DECLARATION OF SERVICE BY MAILING;

AUDRESSEU TO:

HONOLABLE SUSAN I BAVE COWLITZ COUNTY PROSECUTOR 312 SW. FIRST AVENUE KELSO, WA 98626

AND TU!

MR. CASEY GRANNIS, ESQ. ATTORNEY AT LAW NEILSEN, BROMAN & KOCH, PLLC 1908 E, MADISON St. SEATTLE, WA 9812Z

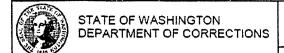
I DECLARE UNDER PENALTY OF PERTURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: APRIL 18 2012

WILLIAM SCHENCK COWLITZ COUNTY JAIL 1935 IST AVENUE

LONGVIEW, WA 98632

DECLARATION OF SERVICE BY MAILING GR 3,1; 28 U.S.C. \$ 1746



APPLICABILITY PRISON/WORK RELEASE/FIELD

OFFENDER/SPANISH MANUAL

REVISION DATE 8/2/10

TITLE

PAGE NUMBER 1 of 8

NUMBER **DOC 350.200** 

**POLICY** 

OFFENDER TRANSITION AND RELEASE

#### **REVIEW/REVISION HISTORY:**

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3/31/89

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3/26/07 AB 07-005 6/27/07 AB 07-019

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8/2/10

#### SUMMARY OF REVISION/REVIEW:

#### APPROVED:

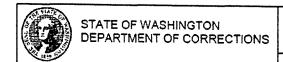
Signature on file

**ELDON VAIL, Secretary** 

Department of Corrections

6/28/10

Date Signed



**POLICY** 

PRISON/WORK RELEASE/FIELD
OFFENDER/SPANISH MANUAL

REVISION DATE PAGE NUMBER 8/2/10 2 of 8

NUMBER DOC 350.200

TITLE

OFFENDER TRANSITION AND RELEASE

**OREFERENCES:** 

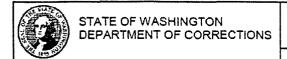
DOC 100.100 is hereby incorporated into this policy; RCW 9.94A; RCW 9A.44.130; RCW 71.09; RCW 72.02.100; RCW 72.09; WAC 137-28; WAC 137-56; ACA 4-4442; ACA 4-4446; ACA 5A-15; ACA 6A-13; DOC 210.025 Gate Money/Transportation Funds/Pre-Paid Phone Cards; DOC 300.380 Classification and Custody Facility Plan Review; DOC 300.500 Work Release Screening; DOC 310.100 Intake; DOC 320.100 Indeterminate Sentence Review Board (ISRB) Reports; DOC 320.110 Community Custody Board/.420 Hearings; DOC 320.145 Violator Confinement in Department Facilities; DOC 350.100 Earned Release Time; DOC 350.210 Transition Resources for Offenders; DOC 350.240 Ten Day Release; DOC 350.255 Registration Notification; DOC 350.500 End of Sentence Review/Sexually Violent Predator Civil Commitment; DOC 350.550 Reporting Abuse and Neglect/Mandatory Reporting; DOC 350.600 Teletype Notification; DOC 380.600 In-State Transfers for Community Offenders; DOC 380.605 Interstate Compact; DOC 390.300 Victim Services Program; DOC 450.320 Contact, Visitation, and Unification/Reunification with Minors; DOC 630.500 Mental Health Services; DOC 630.590 Offender Re-entry Community Safety Program Review; DOC 790.100 Work Ethic Program

#### **POLICY:**

- I. [4-4442] The Department manages offenders with the goal of enhancing public safety by providing offenders a program of release preparation to assist in successful transition into the community. The Department will focus on developing release plans that best utilize available resources. Risk based offender management principles will be used, focusing resources on the highest risk offenders. All release transition planning will be consistent with county of origin guidelines.
- II. Offenders with a community placement requirement whose crime was committed prior to June 11, 1992, must be released on the Earned Release Date (ERD) if the Judgment and Sentence does not specifically require an approved address to transfer to community placement prior to the Maximum Expiration date.
- III. Release dates for offenders housed by the Department as Out-of-State, County, or Federal boarders will be determined by the sending agency.
- IV. Violators will be released per DOC 320.145 Violator Confinement in Department Facilities.

#### DIRECTIVE:

- 1. Transition Plan Development Guidelines and Timeframes
  - A. All offenders released from Prison or Work Release to community custody/ placement, except for those releasing as a violator, will be returned to their



# APPLICABILITY PRISON/WORK RELEASE/FIELD OFFENDER/SPANISH MANUAL REVISION DATE PAGE NUMBER NUMBER 8/2/10 3 of 8 DOC 350,200

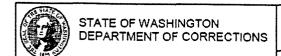
TITLE

**POLICY** 

OFFENDER TRANSITION AND RELEASE

county of origin unless meeting criteria for an exception per County of Origin (Attachment 1) and will have an Offender Release Plan (ORP) investigation approved per Offender Release Plan Procedure (Attachment 5).

- 1. Violators do not require an ORP and will be released at the end of their sanction to the last approved address. Release to a different address will be processed as an in-state transfer per DOC 380.600 In-State Transfers for Community Offenders.
- B. If applicable, the Counselor will submit an End of Sentence Review referral per DOC 350.500 End of Sentence Review/Sexually Violent Predator Civil Commitment
- C. At 12 months prior to the offender's ERD, or upon arrival at Reception if less than 12 months prior to the offender's ERD, the Counselor/facility CCO will meet with the offender to initiate release planning and obtain information for any potential release address(es). Offenders arriving within 12 months of their ERD will have the Custody Facility Plan completed for the purpose of re-entry per DOC 300.380 Classification and Custody Facility Plan Review.
  - Prior to submitting a proposed release address(es) for investigation, the Counselor/facility CCO will complete DOC 11-012 Release Sponsor Orientation Checklist with each prospective sponsor. County of origin must be considered per Attachment 1. The Counselor/facility CCO will determine the appropriateness of the proposed plan(s), verify, and then send DOC 11-013 Sponsor Letter(s) to the address(es) informing the proposed sponsor(s) of the expectations and process.
    - a. The primary release plan will be documented in the 12 month Reentry Custody Facility Plan. Secondary plans will be documented in the offender's electronic file using the Release Planning/Issues chrono.
    - b. If the offender cannot provide an address, the Counselor/facility CCO will assist the offender in locating an appropriate housing resource per Offender Release Plan Procedure (Attachment 5). Work Release should be considered as part of a transition plan per DOC 300.500 Work Release Screening if the offender has no housing resources.
  - 2. Additional Release Planning Information
    - a. Offenders in the Work Ethic Program will have a release plan per DOC 790.100 Work Ethic Program.



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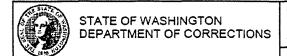
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#### **OFFENDER TRANSITION AND RELEASE**

- b. Offenders under Indeterminate Sentence Review Board (ISRB) jurisdiction will be evaluated for release per DOC 320.100 Indeterminate Sentence Review Board (ISRB) Reports or DOC 320.110 Community Custody Board/.420 Hearings.
- c. All offenders with supervision requirements requesting to release out-of-state must be accepted by the receiving state and will be processed per DOC 380.605 Interstate Compact.
- d. Release for seriously mentally ill offenders will be coordinated per DOC 630.500 Mental Health Services. Release for offenders participating in the Offender Re-entry Community Safety Program will be coordinated per DOC 630.590 Offender Re-entry Community Safety Program Review by the community DOC Transition Mental Health Counselor working with the assigned institution mental health professional.
- e. For offenders serving a Community Custody Jail (CCJ) sentence concurrent with a Prison commitment, the CCJ portion of the sentence does not require an approved release address.
- f. Staff will complete an ORP for an offender with an in-state, Out-of-State, or federal hold/detainer per Offender Release Plan Determination (Attachment 4) when Correctional Records Supervisor has confirmed release to detainer or other jurisdiction.
- D. If the offender has exhibited threatening behavior toward victims or potential victims per DOC 390.300 Victim Services Program or community concerns have been documented in the offender's electronic file, the Counselor/facility CCO will consult with the Community Victim Liaison to determine whether there are victim safety concerns that need to be addressed in the transition process. If the Community Victim Liaison is not identified in the Community Concerns chrono, the Counselor/facility CCO will contact Victim Services at DOCVictimServices@doc.wa.gov.
- E. At 6 months prior to the offender's ERD, the Counselor/facility CCO will:
  - 1. Submit an Investigation or Notification ORP per the Offender Release Plan Determination (Attachment 4) and Offender Release Plan Procedure (Attachment 5).
    - a. If the Counselor/facility CCO working with the offender is able to identify more than one potential release address, the primary and secondary plans will be submitted in the ORP per Attachment 5.



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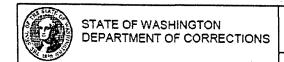
- 2. Document each submitted ORP in the offender's electronic file using the Release Planning/Issues chrono.
- 3. Review the offender for 10 day release consideration per 350,240 Ten Day Release if not previously completed.
- 4. When the ORP is assigned to a Field CCO, send the assigned Field CCO any information from DOC 20-047 Community Release Plan Packet Checklist that is not available in Liberty.
- F. At 30 days prior to ERD, if the offender cannot afford to reside at an identified address, the Counselor/facility CCO will submit paperwork to enroll the offender in the Housing Voucher Program.
- G. For offenders under ISRB jurisdiction, the assigned Counselor/facility CCO will work with the offender in advance of the Board hearing to prepare ORP information so the ORP can be submitted immediately after the offender has been found parolable/releasable by the ISRB.

#### II. Investigation ORPs

- A. The Field CCO will complete the ORP investigation within 30 calendar days of assignment per Attachment 5. The investigation ORP process is outlined in Attachment 2.
- B. If there is an in-work ORP at 60 days prior to the Maximum Expiration date, the Counselor/facility CCO will contact the assigned Field CCO for immediate approval or denial of the plan. If the plan is denied, the Counselor/facility CCO will initiate a Notification ORP for offenders releasing homeless or refusing to provide an address. If a plan cannot be developed, offenders will be released on their Maximum Expiration date.

#### III. Notification ORPs

- A. Notification ORPs will be completed per Offender Release Plan Determination (Attachment 4) and submitted 6 months prior to ERD.
- B. Prior to releasing an offender with any conviction that requires registration, staff must complete the notification requirement per DOC 350.255 Registration Notification.
- C. Supervision Closure for Monetary-Only Release
  - 1. Offenders releasing with monetary obligations and no supervision requirements will have a Notification ORP. It will be sent to the



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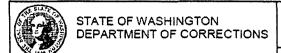
### POLICY OFFENDER TRANSITION AND RELEASE

assignment staff where the offender has existing Field cases, if any. If none, the assignment staff for the location where the offender is scheduled to be released.

- 2. Upon release from Prison, the assignment staff will:
  - a. Gain the monetary-only cause(s) on the offender case management screen for the date of release.
  - b. Immediately close the monetary-only cause(s) effective the date of release by entering the appropriate supervision closure activity on the offender case management screen.
    - Close the Intake checkdate with "No Resolution" or "Not Determined".

#### IV. Denials

- A. If the plan is denied, the Counselor/facility CCO will work with the offender and the Regional Housing Specialist for the offender's county of origin to develop a viable, alternative release plan.
- B. If the ORP is denied, the offender may appeal to the Assistant Secretary for Government, Community Relations and Regulatory Compliance.
  - 1. The offender will submit his/her appeal in writing within 5 business days of receiving notice of the denied ORP, including the reason for appeal and any additional information for consideration.
  - 2. The Assistant Secretary for Government, Community Relations and Regulatory Compliance will notify the offender in writing of the decision within 15 working days of receiving the appeal. The decision is final.
    - a. The offender will be notified in writing if additional time is needed for review.
  - 3. Copies of all documents related to the appeal will be placed in the offender's central file and scanned into Liberty.
  - 4. The appeal process does not apply to offenders:
    - a. Under ISRB jurisdiction.



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- With a court ordered condition prohibiting the offender from residing at the location of the proposed plan, unless the offender provides a modified court document signed by a judge.
- c. With victim safety concerns that have been verified by the Victim Services Program.

#### V. Offenders Releasing To Detainers

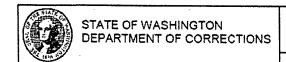
- A. Offenders with an Immigration and Customs Enforcement (ICE) detainer will be released on their ERD if releasing to the detainer. At 6 months prior to the offender's ERD, a Notification ORP will be submitted to the ICE/Deportation Unit Assignment Officer at <a href="mailto:DeportationAssign@doc.wa.gov">DeportationAssign@doc.wa.gov</a>.
  - 1. The Correctional Records Supervisor will complete DOC 01-011 Release Audit Checklist Central File.
- B. Offenders with a detainer will be released on their ERD per Attachment 3 and Attachment 4 if releasing to the detainer. The appropriate ORP will be submitted.
- C. Offenders under ISRB jurisdiction will not release to a detainer without ISRB authorization.

#### VI. [6A-13] Offender Release Procedures

- A. At 60 days prior to an offender's transfer or release, a Records staff/designee will initiate the release process per Attachment 6.
- B. [5A-15] Prior to releasing a Work Release offender, the facility CCO will prepare an Exit Custody Facility Plan that reviews the offender's performance. The report will be maintained in the offender's electronic record and will include:
  - 1. A summary of the offender's program activities,
  - 2. Any unusual occurrences,
  - 3. Community resource references that affected supervision outcomes, and
  - 4. An objective assessment of the offender's program participation.
- C. The offender will be issued gate money and/or a pre-paid phone card per DOC 210.025 Gate Money/Transportation Funds/Pre-Paid Phone Cards.

#### **DEFINITIONS:**

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Community Custody, Homeless. Other words/terms appearing in this policy may also be defined in the glossary.



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#### **ATTACHMENTS:**

County of Origin (Attachment 1)

Investigation Offender Release Plan Process (Attachment 2)

Offender Release Plan and Release Process for In-State, Out-of-State, or Federal Detainer (Attachment 3)

Offender Release Plan Determination (Attachment 4)

Offender Release Plan Procedure (Attachment 5)

Release Process (Attachment 6) [6A-13]

#### DOC FORMS:

DOC 01-011 Release Audit Checklist - Central File

DOC 02-243 5288/6162 Notice to Offender

DOC 07-023 Registration Notification

DOC 09-128 Request for Termination/Discharge

DOC 09-254 60 Day Letter - For Release to Detainer

DOC 09-265 Court - Special Supervision Closure

DOC 11-012 Release Sponsor Orientation Checklist

DOC 11-013 Sponsor Letter

DOC 20-047 Community Release Plan Packet Checklist

DOC 20-311 Order of Release

There are two separate and distinct parts to this case; (1) the period between May 5, 2010, to October 28, 2010 - COA 41401-5-II; and, (2) October 29, 2010, to April 1, 2011 - COA 42451-7-II; as illustrated below:

#### COA 41401-5-II

#### May 12, 2010

- 1. Failure to report to the Department of Corrections in Thurston County as ordered;
- 2. Failure-to-make-himself-available-for-urinalysis-testing
  in-Thurston-County. \*DISMISSED\*

#### COA 42451-7-II

#### November 24, 2010 (Count I)

- 1. Failing to report to the Department of Corrections in Thurston County as ordered;
- 2. Leaving Thurston County without permission;
- 3. Failure to make himself available for urinalysis testing in Thurston County.

#### January 3, 2011 (Count II)

- 1. Failure to report to the Department of Corrections in \_\_\_\_\_\_
  Thurston County as ordered;
- 2. Remaining in Cowlitz County without permission;

#### January 29, 2011 (Count III)

- 1. Failure to report to assigned Community Corrections Officer since 1/10/2011 in Thurston County;
- 2. Failure to be available for random urinalysis testing since 1/10/2011;
- 3. Remaining in Cowlitz County without permission since 1/10/2011.



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RCWs > Title 9 > Chapter 9.94B

#### **Chapter 9.94B RCW**

## Sentencing — crimes committed prior to july 1, 2000

**Chapter Listing** 

#### **RCW Sections**

- 9.94B.010 Application of chapter.
- 9.94B.020 Definitions.
- 9.94B.030 Postrelease supervision -- Violations -- Expenses.
- 9.94B.040 Noncompliance with condition or requirement of sentence -- Procedure -- Penalty.
- 9.94B.050 Community placement.
- 9.94B.060 Community placement for specified offenders.
- 9.94B.070 Community custody for sex offenders.
- 9.94B.080 Mental status evaluations.
- 9.94B.090 Transfer to community custody status in lieu of earned release.
- <u>9.94B.100</u> Legal financial obligations -- Wage assignments -- Sentences imposed before July 1, 1989.

## 9.94B.010 Application of chapter.

- (1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.
- (2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter.

[2008 c 231 § 51.]

#### Notes:

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

## 9.94B.020 Definitions.

In addition to the definitions set out in RCW <u>9.94A.030</u>, the following definitions apply for purposes of this chapter:

- (1) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.
- (2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW \*16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.
- (3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

[2008 c 231 § 52.]

#### Notes:

\*Reviser's note: RCW <u>16.52.200</u> was amended by 2009 c 287 § 3, changing subsection (6) to subsection (7).

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

#### 9.94B.030

1222 SEC. 522.

Postrelease supervision — Violations — Expenses.

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW <u>9.94B.040</u>. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

[2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

#### Notes:

Effective date -- 2009 c 28: See note following RCW 2.24,040.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

#### 9.94B.040

## Noncompliance with condition or requirement of sentence — Procedure — Penalty.

- (1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.
- (2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.
- (3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:
- (a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.
- (ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.
- (iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.
- (b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;
- (c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;
- (d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and
- (e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.
- (4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the

offender's consent, as described under RCW 71.05.630.

- (5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.
  - (6) Nothing in this section prohibits the filing of escape charges if appropriate.

[2002 c 175 § 8; 1998 c 260 § 4. Prior: 1995 c 167 § 1; 1995 c 142 § 1; 1989 c 252 § 7; prior: 1988 c 155 § 2; 1988 c 153 § 11; 1984 c 209 § 12; 1981 c 137 § 20. Formerly RCW <u>9.94A.634</u>, <u>9.94A.200.</u>]

#### Notes:

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Intent -- 1998 c 260: See note following RCW 9.94A.500.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

Effective date -- Application of increased sanctions -- 1988 c 153: See notes following RCW 9.94A.030.

Effective dates -- 1984 c 209: See note following RCW 9.92.150.

Effective date -- 1981 c 137: See RCW 9.94A.905.

#### 9.94B.050

#### Community placement.

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW <u>9.94A.501</u>, the department shall supervise any sentence of community placement imposed under this section.

- (1) The court shall order a one-year term of community placement for the following:
- (a) A sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990; or
  - (b) An offense committed on or after July 1, 1988, but before July 25, 1999, that is:
  - (i) Assault in the second degree;
  - (ii) Assault of a child in the second degree;
- (iii) A crime against persons where it is determined in accordance with \*RCW <u>9.94A.602</u> that the offender or an accomplice was armed with a deadly weapon at the time of commission; or
- (iv) A felony offense under chapter <u>69.50</u> or <u>69.52</u> RCW not sentenced under RCW <u>9.94A.660</u>.
- (2) The court shall sentence the offender to a term of community placement of two years or up to the period of earned release awarded pursuant to RCW <u>9.94A.728</u>, whichever is longer, for:

- (a) An offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, including those sex offenses also included in other offense categories;
- (b) A serious violent offense other than a sex offense committed on or after July 1, 1990, but before July 1, 2000; or
- (c) A vehicular homicide or vehicular assault committed on or after July 1, 1990, but before July 1, 2000.
- (3) The community placement ordered under this section shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release. When the court sentences an offender to the statutory maximum sentence then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible. Any period of community custody actually served shall be credited against the community placement portion of the sentence.
- (4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:
- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
  - (d) The offender shall pay supervision fees as determined by the department; and
- (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.
- (5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:
  - (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
  - (c) The offender shall participate in crime-related treatment or counseling services;
  - (d) The offender shall not consume alcohol; or -
  - (e) The offender shall comply with any crime-related prohibitions.
- (6) An offender convicted of a felony sex offense against a minor victim after June 6, 1996, shall comply with any terms and conditions of community placement imposed by the department relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.
- (7) Prior to or during community placement, upon recommendation of the department, the sentencing court may remove or modify any conditions of community placement so as not to be more restrictive.

[2003 c 379 § 4; 2002 c 175 § 13; 2000 c 28 § 22. Formerly RCW 9 94A.700.]

#### Notes:

N. . K.

\*Reviser's note: RCW  $\underline{9.94A.602}$  was recodified as RCW  $\underline{9.94A.825}$  pursuant to 2009 c 28 § 41.

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

Effective date -- 2002 c 175: See note following RCW 7.80.130.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

#### 9.94B.060

#### Community placement for specified offenders.

Except for persons sentenced under RCW <u>9.948.050(2)</u> or <u>9.948.070</u>, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW <u>9.94A.411(2)</u>, or any felony offense under chapter <u>69.50</u> or <u>69.52</u> RCW not sentenced under RCW <u>9.94A.660</u>, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with \*RCW <u>9.94A.728</u> (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with \*RCW <u>9.94A.728</u> (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW <u>9.94A.501</u>, the department shall supervise any sentence of community placement or community custody imposed under this section.

[2009 c 28 § 19; 2003 c 379 § 5; 2000 c 28 § 23. Formerly RCW 9.94A.705.]

#### Notes:

\*Reviser's note: RCW  $\underline{9.94A.728}$  was amended by 2009 c 455 § 2, deleting subsections (1) and (2).

Effective date -- 2009 c 28: See note following RCW 2.24.040.

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

#### 9.94B.070

#### Community custody for sex offenders.

- (1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.
- (2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94B.050(4) and may include those provided for in RCW 9.94B.050(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.704.
- (3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up

to the maximum allowable sentence for the crime as it is classified in chapter <u>9A.20</u> RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW <u>9.94A.631</u> and may be punishable as contempt of court as provided for in RCW <u>7.21.040</u>.

[2009 c 28 § 20; 2000 c 28 § 24. Formerly RCW 9.94A.710.]

#### Notes:

Effective date -- 2009 c 28: See note following RCW 2.24.040.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

#### 9.94B.080

#### Mental status evaluations.

The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW <u>71.24.025</u>, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

[2008 c 231 § 53.]

#### Notes:

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

#### 9.94B.090

#### Transfer to community custody status in lieu of earned release.

A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with \*RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to \*\*RCW 9.94A.728(1).

[2008 c 231 § 54.]

#### Notes:

Reviser's note: \*(1) RCW  $\underline{9.94A.602}$  was recodified as RCW  $\underline{9.94A.825}$  pursuant to 2009 c 28 § 41.

\*\*(2) RCW <u>9.94A.728</u> was amended by 2009 c 455 § 2, deleting subsection (1).

Intent -- Application -- Application of repealers -- Effective date -- 2008 c

231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

## 9.94B.100

Legal financial obligations — Wage assignments — Sentences imposed before July 1, 1989.

For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94B.040.

[2009 c 28 § 14; 1989 c 252 § 18. Formerly RCW 9.94A.771, 9.94A 201.]

### Notes:

Effective date -- 2009 c 28: See note following RCW 2.24.040.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

State v. Pizor.
Court of Appeals of Washington, Division 3, Panel Seven. June 3, 2004 121 Wash.App. 898 91 P.3d 133
121 Wash.App. 898

Court of Appeals of Washington, Division 3, Panel Seven.

STATE of Washington, Appellant,

V

Christine Anastasia RIZOR, Doris Mae Smith, Kenneth Ray Brown, ANgela Lynn Nelson, Nathaniel Gerald Knox, Jennifer April Gomez, Melissa Ann Castillo, Antonio Garcia Valle, Rolando David Mireles, Francisca Rodriguez Sotelo, Respondents.

Nos. 22123-7-III, 22124-5-III, 22125-3-III, 22126-1-III, 22127-0-III, 22128-8-III, 22129-6-III, 22130-0-III, 22131-8-III, 22137-7-III. June 3, 2004.

# Synopsis

**Background:** Defendants were charged in the Superior Court Yakima County, Susan L. Hahn and James P. Hutton, JJ., with escape from community custody, but court dismissed charges on finding defendants were not inmates. State appealed.

**Holding:** The Court of Appeals, Kato, C.J., held that defendants were inmates and properly charged with escape.

Reversed.

# West Headnotes (4)

Change View

- 1 Statutes Intention of Legislature

  The primary rule of statutory construction is to give effect to the legislature's intent.
  - 4 Cases that cite this headnote
- 2 Statutes Meaning of Language
  If a statute's language is clear, its plain meaning must be given effect without resort to rules of statutory construction.
  - 4 Cases that cite this headnote
- 3 Statutes Existence of ambiguity
  A statute is ambiguous when it is susceptible to more than one interpretation.
  - 1 Case that cites this headnote
- 4 Escape Nature and elements of offenses in general
  Felons who served their time in county jail and then placed in community
  custody, from which they escaped, were "inmates" and properly charged with

#### **RELATED TOPICS**

General Rules of Construction

Language of Statute Admits Plain Meaning

Nature and Elements of Offenses

Attempted Escape Convictions of

escape from community custody, under statute defining an "inmate" as someone committed to the custody of Department of Corrections, including but not limited to a person in community custody; moreover, once sentenced, felons are under the jurisdiction of the Department, even if serving time in a county jail. West's RCWA 72.09.015(11), 72.09.310.

# Attorneys and Law Firms

\*\*134 \*899 Gary A. Hintze, Deputy Prosecuting Attorney, Yakima, WA, for Appellant.

Louis Daniel Fessler, Attorney at Law, Yakima, WA, for Respondents.

# Opinion

KATO, C.J.

The State charged the respondents here with escape from community custody under RCW 72.09.310. Claiming they were not inmates under the statute, each moved to dismiss. The court reasoned that, because the respondents served their time at county jails, they were not in the custody of the Department of Corrections \*900 and thus were not inmates under RCW 72.09.310. The State appeals. We reverse.

These respondents were convicted of felonies after July 1, 2000. Each was sentenced to a term of less than one year to be served at the Yakima County Jail and to one year of community custody under former RCW 9.94A.383 (1988).

The respondents violated their terms of community custody by failing to report to the Department of Corrections (DOC) as required. The State then charged them with escape from community custody under RCW 72.09.310.

Claiming they were not in DOC custody because they had served their sentences in a county jail and therefore were not inmates for purposes of RCW 72.09.310, the respondents filed motions to dismiss. The court ordered dismissal of the charges. The State appealed, whereupon these cases were consolidated by this court.

The respondents were each charged with escape from community custody under RCW 72.09.310. That statute provides:

An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW.

The respondents claim that they could not be charged under this section because they were not inmates. RCW 72.09.015(11) defines inmates:

"Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received \*\*135 from another state, state agency, county, or federal jurisdiction.

\*901 The question is whether the respondents' "community custody" status makes them inmates for purposes of RCW 72.09.310.

The Sentencing Reform Act of 1981 distinguishes between defendants sentenced to a term of confinement of more than one year and those sentenced to a term of less than one year. See RCW 9.94A.190. Those who are sentenced to more than one year

serve their terms in state facilities; those who are sentenced to less than one year serve their terms in local facilities. RCW 9.94A.190(1).

Distinctions also exist between "community custody," "community placement" and "community supervision." <sup>1</sup> Before July 1, 2000, defendants sentenced to a term of incarceration of less than one year were placed in "community supervision." Former RCW 9.94A.383 (1988). But the legislature amended this statute in the Offender Accountability Act of 1999. The amendment, effective July 1, 2000, \*902 provided that courts could impose up to one year of "community custody" on defendants who were sentenced to less than one year in jail. Former RCW 9.94A.383 (LAWS OF 1999, ch. 196, § 10); recodified at RCW 9.94A.545 (LAWS OF 2000, ch. 28, § 13).

When the legislature enacted RCW 72.09.310 in 1992, the statute did not apply to those defendants who were sentenced to one year or less because, under former RCW 9.94A.383 (1988), those particular defendants were subject only to "community supervision" and not "community custody." They were accordingly not inmates under RCW 72.09.015(11). If the legislature changed the definition of "inmate" by allowing the imposition of "community custody" on those sentenced to less than a year, they would be inmates for purposes of chapter 72.09 RCW.

- 1 2 3 To make that determination, this court must engage in statutory construction. The primary rule of statutory construction is to give effect to the legislature's intent. *City of Bellevue v. E. Bellevue Cmty. Council*, 138 Wash.2d 937, 944, 983 P.2d 602 (1999). If a statute's language is clear, "its plain meaning must be given effect without resort to rules of statutory construction." *State v. Theilken*, 102 Wash.2d 271, 275, 684 P.2d 709 (1984) (*citing Murphy v. Dep't of Licensing*. 28 Wash.App. 620, 625 P.2d 732 (1981)). A statute is ambiguous when it is susceptible to more than one interpretation. *State v. Johnson*, 119 Wash.2d 167, 172, 829 P.2d 1082 (1992).
- 4 The definition of "inmate" in RCW 72.09.015(11) is unambiguous. An "inmate" is someone committed to the custody of DOC, including but not limited to a person on community custody. At the time of their respective violations, each respondent was on community custody. Under RCW 72.09.015(11), they were inmates.

\*\*136 Furthermore, the respondents were felons. "Once sentenced, felons are under the jurisdiction of the Department, even if serving time in a county jail." State v. Law, 110 Wash.App. 36, 40, 38 P.3d 374 (2002) (citing State v. Smeltzer, 86 Wash.App. 818, 821, 939 P.2d 1235 (1997)); see also State v. \*903 Basford, 56 Wash.App. 268, 273, 783 P.2d 129 (1989). The respondent felons were under DOC's jurisdiction and thus under its custody after sentencing. Being an inmate as defined in RCW 72.09.015 (11), each respondent could be charged pursuant to RCW 72.09.310.

RCW 72.09.015(11) also states that a person committed to the custody of DOC includes "persons received from another state, state agency, county, or federal jurisdiction." Even if the respondents were initially in the custody of Yakima County, DOC took custody from the county once they started the community custody portion of their sentences.

Prior to July 1, 2000, those individuals convicted of felonies and sentenced to less than one year in jail were subject only to "community supervision." The Offender Accountability Act of 1999 expanded the use of "community custody" to those convicted of felonies and sentenced to less than one year in jail. In so doing, it also expanded the definition of "inmate" by including those who would not have been subject to community custody prior to the amendments. The statutes are clear and unambiguous. The respondents were on community custody and thus in the custody of DOC. They are therefore inmates as defined in RCW 72.09.015(11) and properly charged with escape from community custody. The court erred by dismissing the charges.

Reversed.

WE CONCUR: SCHULTHEIS and KURTZ, JJ.

# **Parallel Citations**

91 P.3d 133

### **Footnotes**

Those terms are defined in RCW 9.94A.030 as:

"(5) 'Community custody' means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

....

"(7) 'Community placement' means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

4

"(9) 'Community supervision' means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states."

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101 Wash.2d 576 Supreme Court of Washington, En Banc.

STATE of Washington, Respondent,

 $\mathbf{v}$ 

Gerald Jean SHRINER, Petitioner.

No. 49585-8. May 17, 1984.

Defendant was convicted by jury in the Superior Court, Snohomish County, Dennis J. Britt, J., of first-degree theft of rental car, and he appealed. The Court of Appeals, 33 Wash. App. 800, 658 P.2d 31, affirmed, and defendant again appealed. The Supreme Court, Dore, J., held that defendant who failed to return rental car was improperly charged and convicted under first-degree theft statute, since he should have been charged under special criminal possession of a rented motor vehicle statute.

Reversed and remanded.

Brachtenbach, J., concurred in result with opinion in which Dolliver, J., and Cunningham, J. pro tem., joined.

# West Headnotes (6)

Change View

- 1 Automobiles Taking and Using Vehicle or Parts Without Consent of Owner Offense of criminal possession of a rented motor vehicle contains three elements: service of a written demand, to return a motor vehicle valued at more than \$1,500 and willfully neglecting to return the motor vehicle. West's RCWA 9A.56.095.
- 2 Larceny Nature and Elements in General To commit first-degree theft, one must wrongfully obtain or exert unauthorized control over another's property valued at over \$1,500 with intent to deprive him of such property. West's RCWA 9A.56.010 to 9A.56.030.
- 3 Statutes Construction with Reference to Other Statutes Special criminal possession of rented motor vehicle statute and general first-degree theft statute are concurrent, since all elements required to be proved for conviction of first-degree theft are also elements that must be proved for conviction of criminal possession of a rented motor vehicle. West's RCWA 9A.56.010 to 9A.56.030, 9A.56.095.

27 Cases that cite this headnote

#### **RELATED TOPICS**

### General Rules of Construction

Specific Subject Matter of General Statute

#### Larceny

### Prosecution and Punishment

Essential Element of Offense of Theft of United States Property

### Receiving Stolen Goods

#### Knowledge of Theft and Intent

Defendant of Unauthorized Use of Motor Vehicle

- 4 Statutes General and Special Statutes
  - Where a special statute punishes the same conduct which is punished under general statute, the special statute applies and accused can be charged only under that statute; it is not relevant that the special statute may contain additional elements not contained in the general statute; rather, determining factor is that the statutes are concurrent in the sense that the general statute will be violated in each instance where the special statute has been violated.
  - 52 Cases that cite this headnote
- 5 Statutes General and Special Statutes
  Creation of a specific special statute shows a legislative intent that persons
  who perform the type of acts to which it is directed should be punished under
  the specific statute or not at all.
  - 11 Cases that cite this headnote
- General and Special Statutes

  Defendant who failed to return rented automobile was improperly charged and convicted under first-degree theft statute, since he should have been charged under special criminal possession of a rented motor vehicle statute. West's RCWA 9A.56.010 to 9A.56.030, 9A.56.095.
  - 15 Cases that cite this headnote

# Attorneys and Law Firms

\*\*238 \*577 Paris K. Kallas, Washington Appellate Defender Ass'n, Seattle, for petitioner.

Seth Dawson, Snohomish County Prosecutor, S. Aaron Fine, Deputy Pros. Atty., Everett, for respondent.

### Opinion

DORE, Justice.

Gerald Jean Shriner appeals his conviction for first degree theft. This case raises the issue whether the defendant should have been charged under the special criminal possession of a rented motor vehicle statute, RCW 9A.56.095, a class C felony, rather than the general first degree theft statute, RCW 9A.56.010-.030, a class B felony. We hold the defendant should have been charged under the \*578 special statute, and reverse the Court of Appeals. *State v. Shriner*, 33 Wash.App. 800, 658 P.2d 31 (1983).

### Facts

On May 5, 1979, a person identifying himself as Gary Kent Roberts rented a 1979 Ford Mustang from an Everett car rental agency. The rental agent identified Shriner at trial as the person who rented the Mustang under the name Gary Roberts. The address stated on the rental form was that of Shriner's mother, who later made two additional rental payments on the automobile to the agency. A third payment was made by an unidentified person.

Rental on the automobile was paid through May 14, 1979. The automobile was not, however, returned on that date nor could the person who rented it from the agency be located in the Everett area. Approximately 1 month later, the automobile \*\*239 was located in Nebraska where police had impounded it.

The Snohomish County Prosecutor's office subsequently filed an information charging the petitioner with:

FIRST DEGREE THEFT, committed as follows: That the defendant, on or about the 15th day of May, 1979, did wrongfully obtain and exert unauthorized control over property and services, to-wit: 1979 Ford Mustang, Washington License UFD 860, belonging to Airways Rent-a-Car, of a value exceeding \$1,500, with intent to deprive Airways Rent-a-Car, of such property and services; proscribed by RCW 9A.56.030(1) (a), a felony ...

Clerk's Papers, at 34. The petitioner was found guilty. He now appeals. The Court of Appeals found that the general theft statute and the special criminal possession of a rented motor vehicle statute are not concurrent because the latter has the additional element of demand notice. Without service of this demand letter, there is no right to bring a criminal action under the criminal possession of a rented motor vehicle statute. The Court of Appeals held that, because of the differing elements between the two statutes, defendant was properly convicted.

### \*579 Concurrent Statutes

- 1 The offense of criminal possession of a rented motor vehicle contains three elements: (1) service of written demand, (2) to return a motor vehicle valued at more than \$1,500 and (3) wilfully neglecting to return the motor vehicle. "Wilfully neglects" is defined as failure to return with intent to deprive the owner of the property or as failure to return with intent to exert unauthorized control over the property. 1
- 2 In contrast, to commit first degree theft, one must wrongfully obtain or exert unauthorized control over another's property valued at over \$1,500 with intent to deprive him of such property.<sup>2</sup>
- 3 It is evident that whenever a person has violated the criminal possession of a rented motor vehicle statute he has also committed theft in the first degree. All of the elements required to be proved for a conviction of first degree \*580 theft are also elements that must be proved for conviction of criminal possession of a rented motor vehicle. We conclude that these statutes are concurrent.

## General/Special Rule of Construction

- 4 Our holding that the statutes are concurrent requires us to consider whether the petitioner was properly charged. It is a well established rule of statutory construction that "where a special statute punishes the same conduct which is punished under a general statute, the special statute applies and the accused can be charged only under that statute." \*\*240 State v. Cann. 92 Wash.2d 193, 197, 595 P.2d 912 (1979). It is not relevant that the special statute may contain additional elements not contained in the general statute; *i.e.*, notice. The determining factor is that the statutes are concurrent in the sense that the general statute will be violated in each instance where the special statute has been violated. In *Cann*, we held that solicitation for the purposes of prostitution is chargeable under RCW 9A.88.080, which prohibits conduct advancing prostitution, rather than RCW 9A.28.030, which generally prohibits solicitation to commit a crime.
- In State v. Walls. 81 Wash.2d 618, 503 P.2d 1068 (1972), petitioner was convicted of grand larceny for paying a cumulative restaurant bill with another person's credit card. Petitioner argued that, since the restaurant was apparently connected with an inn, the "defrauding an innkeeper" statute, which carried a lower penalty, should apply, and that he was, therefore, improperly charged with the higher crime. This court agreed, and remanded the case for a new trial, saying:

We have previously held that where general and special laws are concurrent, the special law applies to the subject matter contemplated by it to the exclusion of the general law.... And a related rule holds that where a general statute and a subsequent special law relate to the same subject, the provisions of the special statute must prevail.... It is clear that in addition to the larceny statutes in RCW 9.54, the legislature established a special criminal category \*581 under RCW 9.45.040 for the procurement of food, lodging, accommodations, or credit, by fraud from any hotel, restaurant, boarding house or lodging house. RCW 9.45.040, therefore, is a special law which is applicable to the subject matter contemplated by it to the exclusion of the general larceny statutes.

(Citations omitted.) Walls. at 622-23, 503 P.2d 1068.

The Walls case had another factor that makes it similar to the case at bar: the record did not contain sufficient evidence to determine whether the inn in question contained more than 15 rooms, an "element" necessary to charge the defendant under one of the specific statutes. The court held that the defendant was improperly charged under the general theft statute regardless of this fact.

In State v. Danforth, 97 Wash.2d 255, 643 P.2d 882 (1982), the issue was whether a defendant who failed to return to jail while on a work release program could be charged under the general escape statute, or whether he had to be charged under the specific statute prohibiting failure to return to a work release facility. The latter statute carried a lesser penalty and also placed a higher standard on the State on the issue of intent. This court held that only the specific statute could be charged, saying:

 General principles of statutory construction dictate this result. First, we have consistently applied the rule that when two statutes are concurrent, the specific statute prevails over the general.

This rule is consistent with general principles of statutory construction. See 2A C. Sands, Statutory Construction § 51.05 (4th ed. 1973).

In the case before us, both statutes are clearly applicable. The general statute, RCW 9A.76.110, forbids escape from work release programs as well as prisons, since the definition of a detention includes a work release facility. RCW 9A.76.010. *State v. Yallup*, 25 Wn.App. 603, 606, 608 P.2d 651 (1980). RCW 72.65.070, on the other hand, deals specifically with escape from work release. RCW 72.65.070, as the more specific statute, thus preempts prosecutions under RCW 9A.76.110 of those defendants whose crime is failure to return to a work release facility.

\*582 Danforth, at 257-58, 643 P.2d 882.

Danforth also addressed the question of additional elements required to obtain a conviction under the special escape from work release statute:

Second, we are of the opinion that the specific requirement that the defendant's \*\*241 conduct be willful under RCW 72.65.070 recognizes a valid legislative distinction between going over a prison wall and not returning to a specified place of custody. The first situation requires a purposeful act; the second may occur without intent to escape. It is easy to visualize situations where a work release inmate failed to return because of a sudden illness, breakdown of a vehicle, etc. This explains the requirement of willful action.

Finally, this interpretation of the two statutes is necessary to give effect to RCW 72.65.070. RCW 72.65.070 differs significantly from the general escape statute in that the prosecutor must prove the failure to return was willful. Under RCW 9A.76.110, however, a conviction will be sustained if the State demonstrates that the defendant "knew that his actions would result in leaving confinement without permission." State v. Descoteaux, 94 Wn.2d 31, 35, 614 P.2d 179 (1980).

Given the choice, a prosecutor will presumably elect to prosecute under the general escape statute because of its lack of a mental intent requirement. Consequently, the result of allowing prosecution under RCW 9A.76.110 is the complete repeal of RCW 72.65.070. This result is an impermissible potential usurpation of the legislative function by prosecutors.

In summary, sound principles of statutory interpretation and respect for legislative enactments require that we hold that the petitioners were improperly charged under the general escape statute.

Danforth, at 258-59, 643 P.2d 882.

The result in *Danforth* was held to be mandated *both* by the special/general rule and by the need to give effect to the special statute. Because the general statute has a lesser mental state element, this court recognized that prosecutors would presumably always elect to charge under it and thus avoid the need to prove the "wilful" element in the special statute. Thus, unless the special statute supersedes the \*583 general, the special statute would effectively be repealed.

The holdings in *Walls* and *Danforth* indicate the irrelevance of additional elements in the special statute. So long as it is not possible to commit the special crime without also committing the general crime, the special supersedes the general.

It is, therefore, irrelevant that the State must additionally prove notice of demand to return the rented motor vehicle to obtain a conviction under the criminal possession of a rented motor vehicle statute.

5 Furthermore, the creation of a specific statute shows a legislative intent that persons who perform the type of acts to which it is directed (e.g., failure to return a rental car rather than stealing a nonrented car) should be punished under the specific statute or not at all. The Legislature appears to have had made a valid distinction between failure to return a rental vehicle and general theft of a nonrented vehicle. The Legislature considers the former less culpable and, in addition, requires the lessor to send demand notice. It is easy to visualize situations where the lessee fails to timely return a rental vehicle because of mere neglect or breakdown of the vehicle. This explains the notice requirement and the lesser penalty. If the car company fails to send the required notice to the defendant, the failure to comply with the statute has no meaning if the defendant can still be prosecuted under another statute carrying a higher penalty.

# Conclusion

In summary, sound principles of statutory interpretation and respect for legislative enactments require that the specific statute prevails to the exclusion of the general.

6 We hold that the defendant was improperly charged and convicted under the first degree theft statute.

We reverse and remand to the trial court for action in accordance with the provisions of this opinion.

\*\*242 WILLIAM H. WILLIAMS, C.J., and ROSELLINI, UTTER, DIMMICK and PEARSON, JJ., concur.

\*584 BRACHTENBACH, Justice (concurring in the result).

I agree with the majority's statement that the Legislature considers violation of the rental statute to involve less culpable conduct than that conduct which constitutes a violation of the first degree theft statute. That fact is evidenced by the differing penalties attached to each. While the Legislature may have made a valid distinction in culpability between failure to return a rental vehicle and general theft of a vehicle, it unfortunately did not create a statutory elemental distinction. In both cases the person must commit first degree theft before violating either statute.

In my opinion, the petitioner's conduct was of the type the Legislature envisioned when it passed the first degree theft statute. The petitioner rented the car for only one day, utilizing an alias and false identification (an Ohio driver's license in the name Gary Roberts), took the vehicle out of this jurisdiction and abandoned it in Nebraska without making any effort to contact the rental agency. His conduct evidences a clear intent to appropriate the property for his own use with no intention of returning it to its rightful owner.

Unfortunately, the Legislature enacted a statute that requires proof of first degree theft before criminal possession of rental property can be found. Thus, a thief who has the foresight to pay the minimal rental amount to obtain initial possession, can abscond with the rental property knowing he will not and cannot be charged with first degree theft-a class B felony.

I do not think that this anomalous result was intended by the Legislature. Nonetheless, because the Legislature chose the language it did, I concur in the result.

In joining the majority's result I too rely on *State v. Danforth*, 97 Wash.2d 255, 643 P.2d 882 (1982). Unlike the majority, however, I feel that proof of notice of demand is not irrelevant. The fact that RCW 9A.56.095 contains a notice requirement is the principal reason I join the majority's result. To hold otherwise would give the prosecutor the option to proceed against a person who rented a car, \*585 even if the rental agency fails to send the required notice. This would effectively repeal the rental statute. Absent this notice requirement, I am not ready to concede, as is the majority, that the general special rule would lead to the same result. *Cf. State v. Sherman*, 98 Wash.2d 53, 61 n. 6, 653 P.2d 612 (1982); *United States v. Batchelder*, 442 U.S. 114, 99 S.Ct. 2198, 60 L.Ed.2d 755 (1979). That issue is best left to another day.

DOLLIVER, J., and CUNNINGHAM, J. Pro Tem., concur.

### **Parallel Citations**

681 P.2d 237

## **Footnotes**

- 1 The pertinent portion of RCW 9A.56.095 provides:
  - "(1) A person is guilty of criminal possession of leased or rented machinery, equipment or a motor vehicle if the value thereof exceeds one thousand five hundred dollars and if he:
  - "(a) After renting machinery, equipment or a motor vehicle under an agreement in writing which provides for the return of said item to a particular place at a particular time, fails to return the item to said place within the time specified, is thereafter served by registered or certified mail addressed to him at his last known place of residence or business with a written demand to return said item within seventy-two hours from the time of the service of such demand, and wilfully neglects to return

said item to any place of business of the lessor within five full business days from the date of service of said notice; or

it

"(2) 'Wilfully neglects' as used in this section means omits, fails or forebears [sic] with intent to deprive the owner of or exert unauthorized control over the property, and specifically excludes the failure to return the item because of a bona fide contract dispute with the owner.

State v. Shriner saved to 'schenk'.

"Criminal possession of leased or rented machinery, equipment or a motor vehicle is a class C felony."

2 "Theft." as charged in the present case, means to "wrongfully obtain or exert unauthorized control over the property ... of another ... with intent to deprive him of such property ..." RCW 9A.56.020(1)(a). The degree of the crime depends upon the value of the property; a value over \$1,500 is first degree theft, a class B felony. RCW 9A.56.030(1)(a) and (2).

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